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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Roderik Cosio,

10 Plaintiff,

11 v.

12 AFNI Incorporated, et al.,

13 Defendants.
14

No. CV-19-05230-PHX-DLR

ORDER

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16 Before the Court is Defendant AFNI Inc.'s ("AFNI") motion to dismiss for failure
17 to state a claim, which is fully briefed. (Docs. 13, 16, 27.) For the following reasons, the
18 Court will grant AFNI's motion.

19 **I. Background**

20 Plaintiff owed \$159.87 to CenturyLink. (Doc. 13-1.) On February 12, 2019, AFNI,
21 a debt collector contracted by CenturyLink to collect the debt, sent Plaintiff a collection
22 letter. (*Id.*) The letter states, in relevant part:

23 **DISCOUNT PAYMENT OFFER**

24 Save \$63.95 and resolve your account

25 We are making another attempt to contact you regarding your
26 overdue account. In an effort to resolve this matter we will
27 accept \$95.92, 60% of the current balance. Once you pay this
discounted amount, your account will be closed and marked
settled in full with Afni, Inc. and CENTURYLINK.

28 (*Id.*) On September 20, 2019, Plaintiff filed a class action complaint for violations of the

1 Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, asserting that the phrase
 2 “settled in full,” included in the letter is contradictory and materially misleading in
 3 violation of the FDCPA. (Doc. 1.) AFNI filed its motion to dismiss for failure to state a
 4 claim on January 6, 2020. The motion is now ripe.

5 **II. Legal Standard**

6 To survive dismissal for failure to state a claim pursuant to Federal Rule of Civil
 7 Procedure 12(b)(6), a complaint must contain factual allegations sufficient to “raise a right
 8 to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
 9 (2007). The task when ruling on a motion to dismiss “is to evaluate whether the claims
 10 alleged [plausibly] can be asserted as a matter of law.” *See Adams v. Johnson*, 355 F.3d
 11 1179, 1183 (9th Cir. 2004); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When
 12 analyzing the sufficiency of a complaint, the well-pled factual allegations are taken as true
 13 and construed in the light most favorable to the plaintiff. *Cousins v. Lockyer*, 568 F.3d
 14 1063, 1067 (9th Cir. 2009). However, legal conclusions couched as factual allegations are
 15 not entitled to the assumption of truth, *Iqbal*, 556 U.S. at 680, and therefore are insufficient
 16 to defeat a motion to dismiss for failure to state a claim, *In re Cutera Sec. Litig.*, 610 F.3d
 17 1103, 1108 (9th Cir. 2008).

18 **III. Discussion**

19 Congress enacted the FDCPA in 1977 to eliminate abusive debt collection practices
 20 by debt collectors without competitively disadvantaging debt collectors who refrain from
 21 such abusive practices. *Wade v. Regional Credit Ass’n*, 87 F.3d 1098, 1099 (9th Cir. 1996)
 22 (citing 15 U.S.C. § 1692(e)). Pursuant to 15 U.S.C. § 1692e, “[a] debt collector may not
 23 use any false, deceptive, or misleading representation or means in connection with the
 24 collection of any debt.”

25 Plaintiff contends that AFNI’s use of the phrase “settled in full” within its collection
 26 letter violates the FDCPA because it is deceptive and misleading,¹ rendering Plaintiff

27
 28 ¹ Specifically, Plaintiff alleges that the term “settled in full” is internally inconsistent
 and materially misleading, because “settled means payment less than full” and “in full”
 means “paid in full.” (Doc. 1.)

1 confused whether payment of the settlement amount would satisfy his account in entirety.

2 Whether conduct violates § 1692e . . . requires an objective
3 analysis . . . whether the least sophisticated debtor would likely
4 be misled by a communication. In this circuit, a debt
5 collector's liability under § 1692e of the FDCPA is an issue of
6 law. The least sophisticated debtor standard is lower than
7 simply examining whether particular language would deceive
8 or mislead a reasonable debtor. The standard is designed to
9 protect consumers of below average sophistication or
10 intelligence, or those who are uninformed or naive, particularly
11 when those individuals are targeted by debt collectors. At the
12 same time, the standard preserv[es] a quotient of
13 reasonableness and presum[es] a basic level of understanding
14 and willingness to read with care.

15 *Gonzales v. Arrow Fin. Serv., LLC*, 660 F.3d 1055, 1061-62 (9th Cir. 2011) (citations and
16 internal quotations omitted). Looking to this standard, the letter sent by AFNI to Plaintiff
17 likely would not mislead or deceive even the least sophisticated debtor, nor did the letter
18 misstate the character, amount, or legal status of the debt.

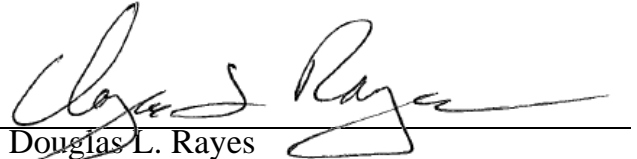
19 Plaintiff's contrary argument performs an unintuitive operation, removing the
20 phrase "settled in full" from the context of the complete letter, and further dividing the
21 terms "settled" and "in full" in order to manufacture confusion. However, "[a] debt
22 collection letter's potential to mislead the least sophisticated consumer must be assessed
23 based on the entirety of the letter and thus a court should not myopically focus on one
24 aspect of the letter when other language in the letter dispels such potential." *Jones v.*
25 *Synergetic Commc'n, Inc.*, No. CV-18-1860-BAS-RBB, 2018 WL 6062414, at *7 (S.D.
26 Cal. Nov. 20, 2018). The Court therefore looks to the letter in its entirety.

27 The letter itself is titled "DISCOUNTED PAYMENT OFFER," making clear that
28 full payment is not required to settle the account. (Doc. 13-1.) Furthermore, the body of
the letter explains that AFNI would accept 60% of the current balance, \$95.92, to resolve
the balance. (*Id.*) Finally, the letter states, "[o]nce you pay this discounted amount, your
account will be closed." (*Id.*) A consumer with a basic level of understanding and a
willingness to read with care would have understood the entirety of the letter to mean that,
in exchange for a payment of \$95.92, AFNI and Centurylink would resolve and close the
account. Any other interpretation is unreasonable. Consequently, Plaintiff fails to state a

1 claim on which relief can be granted.

2 **IT IS ORDERED** that AFNI's motion to dismiss (Doc. 13) is **GRANTED**. The
3 Clerk is directed to terminate this case.

4 Dated this 20th day of February, 2020.

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9 Douglas L. Rayes
United States District Judge
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